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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER	
LEONARDO, M	
ART UNIT	PAPER NUMBER
3309	

DATE MAILED: 01/28/97

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

## Office Action Summary

Application No.

08/509,966

Applicant(s)

DiPoto et al.

Examiner

Mark S. Leonardo

Group Art Unit

3309



☐ Responsive to communication(s) filed on \_\_\_\_\_.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

☒ Claim(s) 1, 4, 6, 18-22, 31, 36, 37, and 42 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 4, 6, 18-22, and 31 is/are rejected.

☒ Claim(s) 36, 37, and 42 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

**Part III DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 6, 18 - 22, & 31 are rejected under 35 U.S.C. § 102(b) as being anticipated by Gatturna (U.S. Patent No. 4,968,315). Gatturna discloses an anchor for securing a suture to bone comprising: an elongated body 110A having a proximal end and a distal end with a narrower cross section 120A; means to engage a driver 112A; at least one ridge (at 110A) about the exterior surface of the body; means 135A for carrying a suture; means for engaging being a projection and being narrower at one cross section (see 112A at figure 25); said means for engaging including means for interlocking with a driver including a detent and recess 150A; and said body further defining a passageway 150A which does not intersect said means for carrying.

An anticipation under 35 U.S.C. 102(b) or 102(e) is established when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 221 U.S.P.Q. 385 (Fed. Cir. 1984).

It is well settled that the law of anticipation does not require that the reference teach what appellant is teaching or has disclosed, but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claims are found in the reference. See Kalman v. Kimberly Clark corp., 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1083). Moreover, it is not necessary for the applied reference to expressly disclose or describe a particular element or limitation of a rejected claim word for word as in the rejected claim so long as the reference inherently discloses that element or limitation. See, for example, Standard Havens Products Inc. v. Gencor Industries Inc., 953 F.2d 1360, 21 U.S.P.Q.2d 1321 (Fed. Cir. 1991).

*Allowable Subject Matter*

3. Claims 36, 37 7 42 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Art Unit: 3309


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4. The prior art made of record and not relied upon during this action is considered pertinent to applicant's disclosure and could possibly be used as prior art to read on Applicant's claims.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark S. Leonardo** whose telephone number is (703) 308-1320. The examiner can normally be reached on Monday - Thursday from 7:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor can be reached at (703) 308-0871. The fax phone number for Art Unit 3309 is (703) 308-0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0858.

  
Mark S. Leonardo  
Patent Examiner  
E-mail: mark.leonardo@uspto.gov  
January 21, 1997

  
MICHAEL BUIZ  
SUPERVISORY PATENT EXAMINER  
GROUP 3300  
1/21/97